

3231

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sens. FLANAGAN, BONACIC, O. JOHNSON, LIBOUS, MORAHAN, SALAND, SEWARD, VOLKER, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law, in relation to a defendant profiting from his or her crime

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1 and 2 of section 632-a of the executive law,
2 as amended by chapter 62 of the laws of 2001, are amended to read as
3 follows:
4 1. For the purposes of this section:
5 (a) "Crime" means (i) any felony defined in the laws of the state; or
6 (ii) an offense in any jurisdiction which includes all of the essential
7 elements of any felony defined in the laws of this state and: (A) the
8 crime victim, as defined in subparagraph (i) of paragraph (d) of this
9 subdivision, was a resident of this state at the time of the commission
10 of the offense; or (B) the act or acts constituting the offense occurred
11 in whole or in part in this state.
12 (b) "Profits from a crime" means (i) any property obtained through or
13 income generated from the commission of a crime of which the defendant
14 was convicted OR FOUND, OR THE COURT ACCEPTS A PLEA OF, NOT RESPONSIBLE
15 BY REASON OF MENTAL DISEASE OR DEFECT; (ii) any property obtained by or
16 income generated from the sale, conversion or exchange of proceeds of a
17 crime, including any gain realized by such sale, conversion or exchange;
18 and (iii) any property which the defendant obtained or income generated
19 as a result of having committed the crime, including any assets obtained
20 through the use of unique knowledge obtained during the commission of,
21 or in preparation for the commission of, a crime, as well as any proper-
22 ty obtained by or income generated from the sale, conversion or exchange

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD06497-01-9

1 of such property and any gain realized by such sale, conversion or
2 exchange.

3 (c) "Funds of a convicted person" means all funds and property
4 received from any source by a person convicted of a specified crime, OR
5 FOUND OR THE COURT ACCEPTED A PLEA OF, NOT RESPONSIBLE BY REASON OF
6 MENTAL DISEASE OR DEFECT, or by the representative of such person as
7 defined in subdivision six of section six hundred twenty-one of this
8 article excluding child support and earned income, where such person:

9 (i) is an inmate serving a sentence with the department of correction-
10 al services or a prisoner confined at a local correctional facility or
11 federal correctional institute, and includes funds that a superinten-
12 dent, sheriff or municipal official receives on behalf of an inmate or
13 prisoner and deposits in an inmate account to the credit of the inmate
14 pursuant to section one hundred sixteen of the correction law or depos-
15 its in a prisoner account to the credit of the prisoner pursuant to
16 section five hundred-c of the correction law; or

17 (ii) is not an inmate or prisoner but who is serving a sentence of
18 probation or conditional discharge or is presently subject to an undisc-
19 charged indeterminate, determinate or definite term of imprisonment or
20 period of post-release supervision or term of supervised release, but
21 shall include earned income earned during a period in which such person
22 was not in compliance with the conditions of his or her probation,
23 parole, conditional release, period of post-release supervision by the
24 division of parole or term of supervised release with the United States
25 probation office or United States parole commission. For purposes of
26 this subparagraph, such period of non-compliance shall be measured, as
27 applicable, from the earliest date of delinquency determined by the
28 board or division of parole, or from the earliest date on which a decla-
29 ration of delinquency is filed pursuant to section 410.30 of the crimi-
30 nal procedure law and thereafter sustained, or from the earliest date of
31 delinquency determined in accordance with applicable federal law, rules
32 or regulations, and shall continue until a final determination sustain-
33 ing the violation has been made by the trial court, board or division of
34 parole, or appropriate federal authority; or

35 (iii) is no longer subject to a sentence of probation or conditional
36 discharge or indeterminate, determinate or definite term of imprisonment
37 or period of post-release supervision or term of supervised release, and
38 where within the previous three years: the full or maximum term or peri-
39 od terminated or expired or such person was granted a discharge by a
40 board of parole pursuant to applicable law, or granted a discharge or
41 termination from probation pursuant to applicable law or granted a
42 discharge or termination under applicable federal or state law, rules or
43 regulations prior to the expiration of such full or maximum term or
44 period; and includes only: (A) those funds paid to such person as a
45 result of any interest, right, right of action, asset, share, claim,
46 recovery or benefit of any kind that the person obtained, or that
47 accrued in favor of such person, prior to the expiration of such
48 sentence, term or period; (B) any recovery or award collected in a
49 lawsuit after expiration of such sentence where the right or cause of
50 action accrued prior to the expiration or service of such sentence; and
51 (C) earned income earned during a period in which such person was not in
52 compliance with the conditions of his or her probation, parole, condi-
53 tional release, period of post-release supervision by the division of
54 parole or term of supervised release with the United States probation
55 office or United States parole commission. For purposes of this subpara-
56 graph, such period of non-compliance shall be measured, as applicable,

1 from the earliest date of delinquency determined by the board or divi-
2 sion of parole, or from the earliest date on which a declaration of
3 delinquency is filed pursuant to section 410.30 of the criminal proce-
4 dure law and thereafter sustained, or from the earliest date of delin-
5 quency determined in accordance with applicable federal law, rules or
6 regulations, and shall continue until a final determination sustaining
7 the violation has been made by the trial court, board or division of
8 parole, or appropriate federal authority; OR

9 (IV) IS COMMITTED TO A SECURE FACILITY DESIGNATED BY THE COMMISSIONER
10 OF MENTAL HEALTH OR SUBJECT TO TREATMENT WHICH MAY INCLUDE CONDITIONAL
11 OR UNCONDITIONAL RELEASE.

12 (d) "Crime victim" means (i) the victim of a crime; (ii) the represen-
13 tative of a crime victim as defined in subdivision six of section six
14 hundred twenty-one of this article; (iii) a good samaritan as defined in
15 subdivision seven of section six hundred twenty-one of this article;
16 (iv) the crime victims board or other governmental agency that has
17 received an application for or provided financial assistance or compen-
18 sation to the victim.

19 (e) (i) "Specified crime" means:

20 (A) a violent felony offense as defined in subdivision one of section
21 70.02 of the penal law;

22 (B) a class B felony offense defined in the penal law;

23 (C) an offense for which a merit time allowance may not be received
24 against the sentence pursuant to paragraph (d) of subdivision one of
25 section eight hundred three of the correction law;

26 (D) an offense defined in the penal law that is titled in such law as
27 a felony in the first degree;

28 (E) grand larceny in the fourth degree as defined in subdivision six
29 of section 155.30 or grand larceny in the second degree as defined in
30 section 155.40 of the penal law;

31 (F) criminal possession of stolen property in the second degree as
32 defined in section 165.52 of the penal law; or

33 (G) an offense in any jurisdiction which includes all of the essential
34 elements of any of the crimes specified in clauses (A) through (F) of
35 this subparagraph and either the crime victim as defined in subparagraph
36 (i) of paragraph (d) of this subdivision was a resident of this state at
37 the time of the commission of the offense or the act or acts constitut-
38 ing the crime occurred in whole or in part in this state.

39 (ii) Notwithstanding the provisions of subparagraph (i) of this para-
40 graph a "specified crime" shall not mean or include an offense defined
41 in any of the following articles of the penal law: articles one hundred
42 fifty-eight, one hundred seventy-eight, two hundred twenty, two hundred
43 twenty-one, two hundred twenty-five, and two hundred thirty.

44 (f) "Earned income" means income derived from one's own labor or
45 through active participation in a business as distinguished from income
46 from, for example, dividends or investments.

47 2. (a) Every person, firm, corporation, partnership, association or
48 other legal entity, or representative of such person, firm, corporation,
49 partnership, association or entity, which knowingly contracts for, pays,
50 or agrees to pay: (i) any profits from a crime as defined in paragraph
51 (b) of subdivision one of this section, to a person charged with or
52 convicted OR FOUND, OR THE COURT ACCEPTED A PLEA OF, NOT RESPONSIBLE BY
53 REASON OF MENTAL DISEASE OR DEFECT, of that crime, or to the represen-
54 tative of such person as defined in subdivision six of section six
55 hundred twenty-one of this article; or (ii) any funds of a convicted
56 person, as defined in paragraph (c) of subdivision one of this section,

1 where such conviction is for a specified crime and the value, combined
2 value or aggregate value of the payment or payments of such funds
3 exceeds or will exceed ten thousand dollars, shall give written notice
4 to the crime victims board of the payment or obligation to pay as soon
5 as practicable after discovering that the payment or intended payment
6 constitutes profits from a crime or funds of a convicted person.

7 (b) Notwithstanding subparagraph (ii) of paragraph (a) of this subdi-
8 vision, whenever the payment or obligation to pay involves funds of a
9 convicted person that a superintendent, sheriff or municipal official
10 receives or will receive on behalf on an inmate serving a sentence with
11 the department of correctional services or prisoner confined at a local
12 correctional facility and deposits or will deposit in an inmate account
13 to the credit of the inmate or in a prisoner account to the credit of
14 the prisoner, and the value, combined value or aggregate value of such
15 funds exceeds or will exceed ten thousand dollars, the superintendent,
16 sheriff or municipal official shall also give written notice to the
17 crime victims board.

18 Further, whenever the state or subdivision of the state makes payment
19 or has an obligation to pay funds of a convicted person, as defined in
20 subparagraph (ii) [or], (iii) OR (IV) of paragraph (c) of subdivision
21 one of this section, and the value, combined value or aggregate value of
22 such funds exceeds or will exceed ten thousand dollars, the state or
23 subdivision of the state shall also give written notice to the crime
24 victims board.

25 In all other instances where the payment or obligation to pay involves
26 funds of a convicted person, as defined in subparagraph (ii) [or], (iii)
27 OR (IV) of paragraph (c) of subdivision one of this section, and the
28 value, combined value or aggregate value of such funds exceeds or will
29 exceed ten thousand dollars, the convicted person who receives or will
30 receive such funds, or the representative of such person as defined in
31 subdivision six of section six hundred twenty-one of this article, shall
32 give written notice to the crime victims board.

33 (c) The board, upon receipt of notice of a contract, an agreement to
34 pay or payment of profits from a crime or funds of a convicted person
35 pursuant to paragraph (a) or (b) of this subdivision, or upon receipt of
36 notice of funds of a convicted person from the superintendent, sheriff
37 or municipal official of the facility where the inmate or prisoner is
38 confined pursuant to section one hundred sixteen or five hundred-c of
39 the correction law, shall notify all known crime victims of the exist-
40 ence of such profits or funds at their last known address.

41 S 2. This act shall take effect immediately.